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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,722	05/23/2001	Valdemar Zawadzki	010315-151	1183

7590

04/26/2004

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EXAMINER

SIMONE, CATHERINE A

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 04/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/862,722	ZAWADZKI ET AL.	
	Examiner	Art Unit	
	Catherine Simone	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Repeated Rejections***

1. The 35 U.S.C. 102 rejection of claims 18-24 as anticipated by Trokhan et al. is repeated for the reasons previously set forth in the Office Action mailed 11/20/03, Pages 3-4, Paragraph #5.
2. The 35 U.S.C. 103 rejection of claims 15-17 over Trokhan et al. in view of Van Phan is repeated for the reasons previously set forth in the Office Action mailed 11/20/03, Pages 4-5, Paragraph #7.

### ***Response to Arguments***

3. Applicant's arguments filed 2/10/04 have been fully considered but they are not persuasive. Applicants argue that "Trokhan et al. cannot anticipate claim 18, which requires a uniform basis weight and porosity in the deformation zones as well as in the areas outside the deformation zones. This could not possibly be obtained by the method and apparatus disclosed by Trokhan et al." However, it is to be pointed out that Trokhan et al. clearly teaches a fiber web having a uniform basis weight and porosity in the deformation zones as well as in the areas outside the deformation zones (see col. 10, lines 47-52) as claimed in the present invention. Applicants have not presented evidence to show unexpected results. The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). See MPEP 716.01 (c). Applicants need to present evidence from which

the Examiner could reasonably conclude that the claimed product differs in kind from that of the prior art.

Furthermore, Applicants argue that “The Examiner admits that Trokhan et al. fail to disclose a fabric comprising a polymer having a softening temperature, as required by independent claim 15. The Examiner apparently relies on Van Phan for this teaching. However, Applicants respectfully submit that the passage of Van Phan referenced by the Examiner (col. 4, lines 54-57) does not refer to polymers having a softening temperature. This passage refers to the addition of a wet strength resin to a tissue paper web. The wet strength agent is acting as a crosslinking agent for cellulose. Accordingly, the Examiner’s argument with respect to the disclosure of Van Phan is irrelevant because this reference does not deal with a patterning fabric, nor with a patterning fabric having a softening temperature.” However, Van Phan was merely cited for suggesting that it is old and well-known in the art to have polymers having a softening temperature to be used in the making of fiber webs. It is to be pointed out in column 4, lines 54-57 of the Van Phan reference that thermoplastic polymers, i.e. polyamide-epichlorohydrin resins, are taught and are used to produce fiber webs and it is well-known in the art that all thermoplastic polymers have softening temperatures. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the fiber web in Trokhan et al. with a polymer having a softening temperature as suggested by Van Phan in order to produce a fiber web for a fluid-pervious fabric. One skilled in the art would clearly add a polymer with a softening temperature to the fibers of Trokhan et al. to produce a fiber web, if so desired. Thus, the claims fail to patentably define over the prior art as applied above.

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (571)272-1501. The examiner can normally be reached on 9:30-6:00.

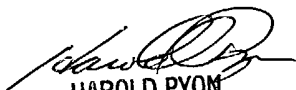
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Catherine Simone  
Examiner  
Art Unit 1772  
April 20, 2004



HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

4/22/04